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IN THE HIGH COURT OF JUDICATURE, AT BILASPUR

WRIT PETITION NO. 1225 **/2001**

PETITIONER: - SECRETARY, KRISHI UPAJ MANDI, SAMITI RAJNADGAON [C.G.]

VERSUS

RESPONDENTS: - 1.PRESIDING OFFICER, LABOUR COURT,RAJNANDGAON
2.ANJORI LAL DEVANGAN R/OSUKULDAIHAN, DISTT-RAJNADGAON [C.G.]

P. R. No. 1129/01 Presented by Shri Jagdish Sethy dated 1.12.2001

Writ petition under art.226/227 of the constitution of India for issuance of a suitable writ, orders or direction. The above named petitioner most humbly and respectfully begs to submit the petition under: -

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.No.1225/2001

Secretary, Krishi Upaj Mandi, Rajnandgaon
Vs.
Presiding Officer, Labour Court
Rajnandgaon & another

ORDER

Post for 12.01.2006

Sd/-
Sunil Kumar Sinha
Judge

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HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.No.1225/2001

Secretary, Krishi Upaj Mandi, Rajnandgaon
Vs.
Presiding Officer, Labour Court
Rajnandgaon & another

Shri Rajiv Shrivastava, counsel for the petitioner.
Shri Ashok Vaishnav, counsel for respondent no.2.

ORDER
(12.01.2006)

SUNIL KUMAR SINHA, J

(1) The secretary, Krishi Upaj Mandi Samiti, Rajnandgaon has challenged the validity of award dated 11.5.2001 passed by the Labour Court Rajnandgaon in case No.28/I.D. Act/Reference/95. This award was passed on a reference being made by the Deputy Labour Commissioner on 03.01.1995 under section 10 of the Industrial Disputes Act 1947 on the following terms :

> "क्या श्री अंजोरी लाल देवांगन का सेवा पृथकीकरण वैध एवं उचित है ? यदि नही तो वे किस सहायता के पात्र है, एवं इस संबंध में नियोक्ता को क्या निर्देश दिए जाना चाहिए" ?

(2) The claim of the respondent No.2 before the Labour Court was that he had worked in the establishment of the petitioner as an Electrician for a continuous period of 2 ½ years and all of a sudden, he was removed from service on 16.6.1992. The contention was that he had assumed the status of a permanent labour and his services could not have been terminated without following the necessary procedure laid down under the law as neither a show cause notice was issued to him nor there had been any departmental enquiry

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in this regard. His contention was that for the first time, he was appointed as daily wager on 01.12.1990 and thereafter he continued on the said post upto 16.6.1992 and then only the removal took place, therefore, in fact, he had worked for more than 240 days and his termination without following the provisions of section 25-F of the Industrial Disputes Act 1947 was illegal. This claim of respondent no.2 was resisted by the petitioner before the Labour Court by filing a written statement and it was pleaded that in fact, the respondent no.2 was appointed as a daily wager vide order dated 01.12.1990 (Ex.P.2) and 31.4.1991 (Ex.P.4) for the period of 89 days on Collectorate rate and the works allotted to him were the seasonal works and he was so called by the Mandi occasionally when such work was available in the particular season and after completion of the work, he was removed and in this manner he was not at all continued after 16.6.1992. In fact, it was denied by the petitioner before the Labour Court that the respondent no.2 continuously worked for 240 days, on account of which, his removal on 16.6.1992 was illegal.

(3) At the evidence, in support of his contention, the respondent no.2 examined himself and had filed 7 exhibits in which Ex.P.1 was his application dated 20.11.1990, Ex.P.2 was an order of appointment dated 1.12.1990 on the daily wages for a period of 89 days, Ex.P.3 was also an order of appointment for 89 days w.e.f. 04.1.1991 and Ex.P.4 was the last order of appointment issued to the respondent no.2 for a further period of 89 days commencing from 04.4.1991 and thereafter, two other documents vide Ex.P.5 and P.6 were filed to show that he was allowed some work in between this period and Ex.P.7 is the representation which appears to be filed by him on 24.7.1992 after the alleged removal on 16.6.1992. The management also examined his witness namely Chandra Sekhar Sahu and thereafter, the learned Judge of the Labour Court after hearing the parties allowed the claim of respondent no.2 and answered the reference in his favour holding that his removal from service is declared to be illegal retrenchment and respondent no.2 was directed to be reinstated in service on the post of Electrician with 75% of back-wages.

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(4) Learned counsel for the petitioner submitted that respondent no.2 could not establish that he had worked for more than 240 days in preceding one year prior to his alleged retrenchment so as to claim a benefit of section 25-F of the Industrial Disputes Act. Hence, the award passed by the Labour Court is apparently bad in law and the same be set aside.

(5) Per contra, learned counsel for respondent no.2 argued that on the basis of records available before the Labour Court, it was established that respondent no.2 had worked for more than 240 days in the preceding year prior to his retrenchment and the Labour Court has rightly passed the award in his favour. It was also contended that if the muster rolls and other records regarding the service of respondent no.2 was not produced before the Labour Court by the management, the Labour Court had rightly based the award on the statement of respondent no.2.

(6) I have heard learned counsel for the parties and have also perused the records of the writ petition as well as the labour court.

(7) In the matter of ***Range Forest Officer -Vs- S.T. Hadimani, (2002) 3 SCC 25*** the Labour Court in its award held that the services of the respondent was terminated without paying the retrenchment compensation. It also held that the affidavit of the workman was sufficient to prove that he had worked for 240 days in a year. The Supreme Court held that it was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for that period was produced by the workman. On this ground alone, the award is liable to be set aside.

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(8) The same position was again reiterated in the matter of ***Rajasthan State Ganganagar S. Mills Ltd., -Vs- State of Rajasthan and another, 2004 (8) SCC 161*** and it was held by the Apex Court that it was for the claimant workman to show that he had in fact worked for 240 days in the year preceding his termination. A mere statement in this regard on the part of the workman cannot be regarded as sufficient evidence. Similar position was also laid down in the matter of ***Municipal Corporation, Faridabad -V- Siri Niwas, (2004) 8 SCC 195.*** The Apex Court again took the similar view in the matter of ***Chairman, Oil and Natural Gas Corporation Ltd. & another -Vs- Shyamal Chandra Bhowmik, 2005(8) Supreme 213.***

(9) In the matter of ***M.P.Electricity Board -Vs- Hariram, (2004) 8 SCC 246,*** the Supreme Court held that the initial burden of establishing the factum of continuous work for 240 days in a year rests with the workman and the above burden having not been discharged and the Labour Court having held so in the said matter, the industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously. Reference was made to the case of Municipal Corporation, Faridabad (Supra) wherein the Apex Court disagreed with the High Court's view of drawing an adverse inference in regard to non production of certain relevant documents.

(10) If we examine the present case in the light of the above decision rendered by the Apex Court, it would appear that in fact, respondent no.2 on the basis of his own statement and 7 documents filed in support of his contention, could not establish that he had worked for a continuous period of 240 days in a year preceding to the date of alleged retrenchment i.e., 16.6.1992. Admittedly, the document Ex.P.2 dated 1.12.1990 would show that respondent no.2 was given an appointment as a daily wager for a period of 89 days commencing from 01.12.1990. Thereafter, vide Ex.P.3 dated 01.1.1991, another order was issued showing his appointment on daily wages for a period of 89 days commencing from 4.1.1991 and lastly an order dated 13.4.1991 (Ex.P.4) was again issued to respondent no.2 for a period of 89 days commencing from 4.4.1991. After this, no appointment orders were

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issued to respondent no.2. The respondent no.2 continued after the period of last order of the appointment dt.13.4.1991 (Ex.P.4) upto the date of his alleged retrenchment is not established by him in this case. No documentary or oral evidence have been produced by him in this regard. Learned counsel for respondent no.2 referred to the evidence of the witness examined on behalf of the management and submitted that since this witness has admitted that respondent no.2 had worked till 16.6.1992, therefore, if the total period of work from the first date of appointment i.e., from 01.12.1990 till 16.6.1992 would be calculated it would come as more than 240 days and the view taken by the Labour Court is just and proper. This contention raised by learned counsel for respondent no.2 cannot be accepted. Though the witness for the petitioner namely Chandra sekhar Sahu had admitted that respondent no.2 was not kept after 16.6.1992, but he had no where stated that respondent no.2 had continuously worked upto 16.6.1992 from the first date of his appointment i.e., from 01.12.1990. His evidence would show that as and when necessity arose, the respondent no.2 was called by the management and was given certain seasonal work. In para no.24 of his statement, he has denied the suggestion given by the counsel for respondent no.2 that respondent no.2 had worked continuously for more than six months or 240 days prior to his alleged retrenchment.

(11) Learned counsel for respondent no.2 had also relied on two decisions reported in ***(2001) 10 SCC 606 (Deep Chandra -Vs- State of U.P. and another) and 2000 (2) M.P.L.J 405(Sukhia @ Sushma -vs- Gambhira)***. So far as the first decision of the Apex Court in the matter of Deep Chandra is concerned, it is on the principles that if the retrenchment is affected without complying with the requirement of section 25-F, the employee has to be reinstated to his original service on the same terms and conditions on which he was working earlier. There is no dispute in the present case like the above one. This is not a case in which the retrenchment is affected without complying with the requirement of section 25-F though the same was necessitated under the law. Rather, it is a case in which there is no necessity of complying with the requirement of section 25-F because the respondent no.2 could not establish that he had worked for more than

240 days in a year preceding to the date of his alleged retrenchment and the law referred to by counsel for respondent no.2 is distinguishable on this point as being not applicable in this case.

(12) Regarding the second decision relied by learned counsel for respondent no.2, in the matter of Sukhia @ Sushma (supra), a single judge of the M.P.High Court, relying on the decision of the Apex Court, held that where a party had not produced the best evidence, which could have thrown light on the issue in controversy, the Court ought to draw an adverse inference against him notwithstanding that onus of proof did not lie on him. The party cannot rely on abstract doctrine of onus of proof or on the fact that he was not called upon to produce same. Para 15 of the decision of the Supreme Court in the matter of Municipal Corporation, Faridabad (Supra) is referable. It has been held by the Apex Court in the said decision that a court of law even in a case where provisions of the Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration is the background of facts involved in the lis. The presumption, thus, is not obligatory because notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some reasonable grounds. The Apex Court held that in the said case the Tribunal did not draw any adverse inference against the appellant and it was within its jurisdiction to do so particularly having regard to the nature of evidence adduced by the respondent. In the present case also, there was no direction from the court to produce any evidence pertaining to the service rendered by respondent no.2 to his employer and non production of documents pertaining to service of respondent no.2 would not automatically render to draw adverse inference against it. The arguments advanced by learned counsel for respondent no.2, that too for the first time before this Court, for drawing adverse inference against the

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employer to hold that the employee had worked for more than 240 days on account of non-production of records of the employee, *suo motu*, particularly when there were no directions of the Court, cannot be accepted.

(13) Therefore, even if we take the entire period as the period of continuous work done by the respondent no.2 since his first date of appointment i.e., 01.12.1990 till the period of his last appointment letter issued vide Ex.P.4 on 13.4.1991 which would end on 03.7.1991, it is not established that he had worked for 240 days in the preceding year from the date of his alleged retrenchment, and the award passed by the Labour Court is not in accordance with law and the same deserves to be set aside.

(14) In the result, the petition is allowed. The impugned award passed by the Labour Court on 11.5.2001 is set aside. However, in the facts and circumstances of this case, the parties are directed to bear their own costs.

Sd/-
Sunil Kumar Sinha
Judge

/Rao/